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IN THE

Supreme Court of the United States

October Term, 1967

No. 109

JOHN HENRY DOKES and SYLVIA DOKES,

Petitioners,

—v.—

STATE OF ARKANSAS.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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One of the reasons petitioners request the Court grant certiorari is to resolve a conflict in the lower courts over the question whether one who is not told that officers cannot make a search without a warrant should be held to waive the warrant requirement by acquiescing in a search. In its Brief in Opposition, the State of Arkansas urges the Court not to exercise its certiorari jurisdiction in this case because decisions of the lower courts are not in conflict over this question.

The Petition for Writ of Certiorari presents a number of appellate court decisions which are at odds, p. 17, note 10. The latest conflict has occurred subsequent to the filing of the Petition for Writ of Certiorari. In *United States* v. *Nikrasch*, 367 F.2d 740, 744 (7th Cir. 1966), the court of appeals held that an accused who had not been apprised of his Fourth Amendment rights could not consent to a search. In reaching this conclusion the court relied upon *Johnson* v. *Zerbst*, 304 U.S. 458, 464 (1938); *Judd* v. *United*

States, 89 App. D.C. 64, 190 F.2d 649, 651 (1951); and *United States* v. *Blalock*, 255 F.Supp. 268 (E.D. Pa. 1966).

On June 29, 1967 in *Gorman* v. *United States*, —— F.2d ——; 36 U.S.L. Week 2039, the First Circuit expressly refused to follow the holding of the Seventh Circuit in *Nikrasch*, that a suspect could not consent to a search if he was not advised of his rights under the Fourth Amendment.

Respectfully submitted,

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Certificate of Service

This is to certify that I have served true copies of the Petitioners' Reply to Brief in Opposition to Petition for Writ of Certiorari in the above styled case upon counsel for the State of Arkansas, by depositing same in the United States mail, air mail, postage prepaid, this 31st day of July 1967, addressed to the Honorable Joe Purcell, Attorney General, Justice Building, Little Rock, Arkansas.

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Attorney for Petitioners